

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

FALCO ERMERT,

Plaintiff,

v.

MODERNLY INC et al.,

Defendants.

Case No. 1:23-cv-01037-JLT-SAB

ORDER DIRECTING CLERK OF COURT TO  
CLOSE CASE AND ADJUST DOCKET TO  
REFLECT VOLUNTARY DISMISSAL

(ECF No. 11)

This action was filed on September 8, 2023. (ECF No. 1.) On November 28, 2023, Plaintiff filed a notice of voluntary dismissal with prejudice and with each party to bear its own costs, attorneys' fees, and expenses pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. (ECF No. 11.)

"[U]nder Rule 41(a)(1)(A)(i), 'a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.' " Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). The Ninth Circuit has held that Rule 41(a) allows a plaintiff to dismiss without a court order any defendant who has yet to serve an answer or motion for summary judgment. Pedrina v. Chun, 987 F.2d 608, 609 (9th Cir. 1993). "[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can't complain, and the

1 district court lacks jurisdiction to do anything about it.” Commercial Space Mgmt. Co., Inc., 193  
2 F.3d at 1078. In this action, no defendant has filed an answer or other responsive pleading.

3 Accordingly, the Clerk of the Court is HEREBY ORDERED to CLOSE the file in this  
4 case and adjust the docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

5  
6 IT IS SO ORDERED.

7 Dated: November 29, 2023

  
UNITED STATES MAGISTRATE JUDGE